

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARTH D. CAPELA,

No. C 11-02811 SBA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

MICHAEL MARTEL, Warden,

Respondent.

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee.

Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 07-4734 SBA (PR). The Court denied the first petition on the merits.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, this petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION

For the foregoing reasons, the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b).

The Clerk of the Court shall enter judgment in accordance with this Order, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

DATED: 7/15/11


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BARTH D CAPELA,

5 Plaintiff,

6 v.

7 MICHAEL MARTEL et al,

8 Defendant.
9 _____/

Case Number: CV11-02811 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on July 19, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Barth Dennis Capela V-58262
17 California State Prison - San Quentin
18 San Quentin, CA 94974

19 Dated: July 19, 2011

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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